

MEMO# 28704

February 3, 2015

State of Washington Issues Policy Statement Regarding Process to Voluntarily Resolve Oversales in the State

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 3-15
OPERATIONS COMMITTEE No. 3-15
TRANSFER AGENT ADVISORY COMMITTEE No. 4-15 RE: STATE OF WASHINGTON ISSUES
POLICY STATEMENT REGARDING PROCESS TO VOLUNTARILY RESOLVE OVERSALES IN THE
STATE

As you may know, the State of Washington has long permitted investment companies to resolve oversale situations in the State through payment of penalties. While the Securities Act of Washington does not provide for the imposition of such penalties, the State has permitted issuers to avoid the filing of an enforcement proceeding upon payment of such penalty. On January 26, 2015, the Washington Securities Division published a Policy Statement that formalizes its current practices. The Policy Statement is available at: <http://www.dfi.wa.gov/sites/default/files/policies/wsr-15-03-006.pdf>, and the process to resolve an oversale is set forth below.

Steps to Take to Resolve an Oversale in the State of Washington

As noted in the Policy Statement, selling investment company shares in excess of those for which "Blue Sky" fees have been paid violates the Washington Securities Act. In lieu of being the subject of an enforcement action to sanction an oversale violation, investment companies may instead use the following procedure to resolve the oversale:

- (1) Prior to filing an amended Form NF to address the oversale, the issuer should contact the Securities Division to inform them of the oversale;
- (2) The investment company should provide the Division with a written statement explaining why the oversale occurred and describing any steps the company has taken to avoid future oversales;
- (3) The investment company should propose a resolution to the oversale and receive

approval for such proposal. Possible resolutions may include one of the following:

- Making a rescission offer, the terms of which must be pre-approved by the Division;
- Entering into a Consent Order with the Division; or
- Paying a monetary penalty that is equal to twice the fee that should have been paid to avoid the oversale.

The Division will consider other proposed resolutions on a case-by-case basis.

(4) Filing an amended Form NF and paying the fee necessary to increase the offering amount to cover the amount of the oversale and any additional securities the investment company intends to offer and sell in Washington during the current notice filing period.

The Policy Statement notes that it “does not limit the Securities Division’s ability to issue an enforcement action with respect to an investment company oversale if the Securities Administrator finds such action to be warranted.”

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